No. 83-2075

# In the Supreme Court of the United States

OCTOBER TERM, 1984

JOHN RANZONI AND ROBERT CUDDEBACK, PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

REX E. LEE
*Solicitor General*

STEPHEN S. TROTT
*Assistant Attorney General*

PATTY MERKAMP STEMLER
*Attorney*

*Department of Justice*
*Washington, D.C. 20530*
*(202) 633-2217*



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## QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish that the truckload of stolen liquor received and sold by petitioners was a part of interstate commerce as required by 18 U.S.C. 2315.

2. Whether petitioners' motion for a new trial on the ground that they did not receive exculpatory evidence until trial was properly denied.

3. Whether petitioner Cuddeback was entrapped as a matter of law.

4. Whether the evidence was sufficient to establish that petitioners knew that the liquor they received and sold was stolen.

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B1-B9) is reported at 732 F.2d 555. The opinion of the district court denying petitioners' motion for a new trial (Pet. App. C1-C2) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on April 26, 1984. The petition for a writ of certiorari was filed on June 18, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Michigan, petitioners were convicted of receiving and selling 600 cases of stolen liquor that were a part of interstate commerce, in violation of 18 U.S.C.

2315. Petitioner Ranzoni was sentenced to four years' imprisonment. Petitioner Cuddeback was sentenced to two years' imprisonment, all but 90 days of which was suspended in favor of two years' probation. The court of appeals affirmed (Pet. App. B1-B9).

The evidence, as reflected in the opinion of the court of appeals, showed that on August 20, 1982, two trucks destined for Pennsylvania were loaded with cases of liquor at a warehouse in Novi, Michigan (Pet. App. B2). On August 22, 1982, it was discovered that one of the truckloads had been stolen while the truck was stored overnight at a facility in Brownstown Township, Michigan.

Within hours of the theft, petitioner Ranzoni obtained the liquor and stored it at a warehouse (Pet. App. B8). During September 1982, Ranzoni made several efforts to dispose of the liquor, including contacting petitioner Cuddeback, but no one was interested in purchasing large quantities of Kahlua (*id.* at B3 & n.2).

Sometime after he had discussed the liquor with petitioner Ranzoni, petitioner Cuddeback had a conversation with an informant in which he mentioned Ranzoni's offer of "liquor at a good price" (Pet. App. B3). The informant arranged a meeting between undercover agent Jess Lopez and petitioner Cuddeback. Cuddeback told Agent Lopez that the wrong truckload had been stolen and that although they had a purchaser for the other truckload, there was no purchaser for the liquor from the stolen shipment. Agent Lopez then agreed to purchase the liquor at the price of $25 per case. Cuddeback telephoned Ranzoni and got his approval. Agent Lopez and petitioner Cuddeback then arranged to have the stolen liquor delivered to a warehouse the following day, at which time petitioners were arrested (*ibid.*).

Both petitioners testified at trial. They acknowledged that they had tried to sell the liquor, but they denied knowing that it was stolen (Pet. App. B4). Ranzoni claimed that he thought the liquor was obtained through an insurance fraud and Cuddeback maintained that he was entrapped by the government (*ibid.*).

2. The court of appeals affirmed (Pet. App. B1-B9). First, the court found that the interstate commerce element of the offense had been satisfied even though the liquor was stolen before it left Michigan for Pennsylania. The court concluded that the liquor "plainly was being conveyed by interstate carriers on its journey to Pennsylvania" (*id.* at B7) and therefore was moving in or was part of interstate commerce within the meaning of 18 U.S.C. 2315.

The court next rejected petitioners' claim that the record lacked proof that they knew the liquor was stolen. The court cited the following evidence as supporting a finding that both petitioners knew the liquor was stolen (Pet. App. B8):

> Ranzoni came into possession of the stolen liquor shortly after it disappeared from the TSI warehouse. During September 1982, Ranzoni was extremely eager to dispose of the liquor as soon as possible. Despite markings on the liquor, indicating it had been approved for sale in Pennsylvania, and having an approximate fair market value of $100 per case, Ranzoni was willing to sell it to Lopez, a resident of Michigan, at $25 a case. * * * During negotiations [to sell the liquor], both Morelli and Lopez testified, Cuddeback commented on several occasions that the alcoholic beverages were stolen and that Ranzoni had encountered serious difficulties in disposing of the liquor since the "wrong truckload was stolen."

Finally, the court found no merit to petitioners' claim of a *Brady*[1] violation, which was based on the government's failure to tell them prior to trial that the informant had received a $10,000 reward for finding the liquor. The court observed that petitioners had not requested this information prior to trial, and, in any event, evidence pertaining to the award was introduced by the government at trial. Consequently, the failure to disclose the award sooner could not have "created a reasonable doubt about [petitioner's] guilt in the mind of the jury which had not existed before" (Pet. App. B8-B9).[2]

## ARGUMENT

1. Petitioners contend (Pet. 7-16) that the failure of the liquor to cross into Pennsylvania precluded a finding that it was moving in or was a part of interstate commerce. They do not deny, however, that at the time of the theft, the liquor was being shipped by common carrier from Michigan to Pennsylvania. It is therefore of no moment that the thieves intercepted the truck transporting the liquor before it had crossed state lines.[3] See *United States* v. *Ajlouny*, 629 F.2d 830, 837 (2d Cir. 1980), cert. denied, 449 U.S. 1111 (1981) (goods stolen from a dock prior to shipment overseas were in foreign commerce); *United States* v. *Franklin*, 568 F.2d 1156, 1157 (8th Cir.), cert. denied, 435 U.S. 955 (1978) (goods were a part of interstate commerce even though they were stolen before they crossed state lines).

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[1] *Brady* v. *Maryland*, 373 U.S. 83 (1963).

[2] The court of appeals refused to consider Cuddeback's entrapment defense because he had not admitted every element of the Section 2315 offense (Pet. App. B9).

[3] 18 U.S.C. 2315 provides in pertinent part:

> Whoever receives, conceals, stores, barters, sells, or disposes of any goods * * * moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen * * *.

Recently, in *McElroy* v. *United States*, 455 U.S. 642 (1982), this Court construed the analogous interstate commerce requirement of 18 U.S.C. 2314, which prohibits transporting forged securities in interstate commerce. Reasoning that the jurisdictional element was intended by Congress to be read broadly, the Court held that a federal offense was committed even though the securities were not forged until they had crossed state lines. The Court observed that "crossing state lines is not the sole manifestation of interstate commerce." *Id.* at 649. To the contrary "interstate commerce begins well before state lines are crossed, and ends only when movement of the item in question has ceased in the destination State." *Id.* at 653 (footnote omitted). This Court's reasoning in *McElroy* fully answers petitioners' claim here.[4]

2. Petitioners argue (Pet. 16-21) that they were denied due process because the government failed to provide them with exculpatory evidence prior to trial. Petitioners specifically claim that they should have been told that the liquor was insured by the shipper and that the shipper gave the informant a $10,000 reward for its recovery. Petitioners also argue that the government should have helped them find Robert Carr, the man who allegedly gave the stolen liquor to Ranzoni.

Cases like *Brady* v. *Maryland, supra,* are concerned with the suppression of exculpatory evidence *at trial,* and no decision of this Court has ever found that due process

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[4]The decision below does not conflict with *United States* v. *Thies*, 569 F.2d 1268 (3d Cir. 1978). In *Thies*, there was a nine-year gap between the movement of the stolen bonds in interstate commerce and their subsequent sale. This gap, the court held, was fatal to establishing the jurisdictional element of a Section 2315 offense. The court never addressed the question presented here and surely did not condemn a prosecution, like this one, where only a few hours elapsed between the theft of goods from an interstate shipment and the receipt of those goods by the defendants.

obliges prosecutors to make pretrial disclosure of such evidence. Even if there were such a duty, however, there would be no occasion for relief here. As the court below observed, petitioners made no pretrial request for material concerning insurance of the shipment of liquor. Thus, they must demonstrate that the evidence could create a reasonable doubt about their guilt. *United States* v. *Agurs*, 427 U.S. 97, 112 (1976). Petitioners cannot satisfy that burden because the jury was actually informed at trial both that the shipment was insured and that the informant had received the reward. Petitioners had a full opportunity to argue to the jury that the liquor was not actually stolen but was instead disposed of as part of an insurance fraud, as in *United States* v. *Bennett*, 665 F.2d 16 (2d Cir. 1981), and they do not explain how obtaining that evidence sooner would have altered the way they presented this defense. Accordingly, there was no due process violation.

With respect to locating Robert Carr, petitioners admit (Pet. 19) that they do not know whether he would have provided them with exculpatory evidence. Moreover, although they knew that Carr existed prior to trial, they never asked the government to help them find him. In these circumstances, there is no basis for petitioners' contention that Carr's whereabouts was *Brady* material or that the government had an obligation to disclose his whereabouts sua sponte. Moreover, petitioners never sought a continuance to look for Carr. Under these circumstances, petitioners have wholly failed to establish a due process violation.

3. Petitioner Cuddeback's argument (Pet. 21-25) that he was entrapped as a matter of law is without merit. The issue of entrapment was properly submitted to the jurors and was justifiably rejected by them. The evidence showed that before any government agent or informant became involved in the sale, petitioner Cuddeback discussed selling the liquor with petitioner Ranzoni (Pet. App. B2; Tr. 413).

Furthermore, it was Cuddeback who first contacted the informant about a debt, and it was Cuddeback and not the informant who raised the subject of the liquor as a means of raising money (Pet. App. B3; Tr. 284-286). At Cuddeback's first meeting with Agent Lopez, he told Lopez that he "had a buyer for the first load [of liquor] but when the thieves took it, they took the wrong load and they didn't have anybody to buy all the Kahlua," which was why he and Ranzoni were holding it for so long (Pet. App. B3; Tr. 91). Certainly, Cuddeback's admission that he was involved in the scheme with Ranzoni defeats his entrapment claim.

As these facts show, Cuddeback's situation bears no resemblance to that of the defendant in *Sherman* v. *United States,* 356 U.S. 369 (1958), relied upon by petitioner Cuddeback (Pet. 21-25). In that case, the informant approached Sherman and initiated the subject of wanting to buy some heroin. At the time, Sherman was attempting to overcome his own addiction and was not selling heroin. He succumbed to the numerous entreaties of the informant, who feigned a physical need for the drug. Accordingly, none of the facts leading to this Court's finding of entrapment in *Sherman* are present here.

4. Finally, there was overwhelming evidence supporting the jury's finding that both petitioners knew that the liquor was stolen. With respect to Cuddeback, the evidence was direct. Agent Lopez testified that Cuddeback referred to the liquor as stolen and even stated that the thieves had taken the wrong truckload (Pet. App. B8). Ranzoni's knowledge was proved circumstantially. Ranzoni received the shipment within hours of the theft; he disposed of the liquor far below market value; the liquor had labels indicating that it was intended for sale in Pennsylvania; and Ranzoni disposed of the liquor in a secretive manner (*ibid.*). It was therefore reasonable for the jury to infer from Ranzoni's actions that he knew the liquor had been stolen.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
*Solicitor General*

STEPHEN S. TROTT
*Assistant Attorney General*

PATTY MERKAMP STEMLER
*Attorney*

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